

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 310 / 1989

Date of Decision: 6.9.96

D.J.Tate & Ors.

Petitioner/s

Shri N.C.Saini

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri V.G.Rege

Advocate for the
Respondent/s

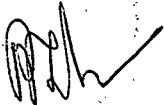
CORAM:


Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? X


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 310/89

On this the day of *July* 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

1. Dominic John Tate
2. Baburao Vishram Pathare
3. Charandas Pitambar Gadhire
4. Babulal Sukhlal Raikwar
5. Sudhakar Govind Pawnorkar
6. Punjabrao Narayanrao Kanphade

C/o. Shri N.C.Saini
Advocate,
House No.1677/10
Section-25,
Ulhasnagar-4.
Dist.Thane.

By Advocate *[Signature]* Shri N.C.Saini

... Applicants

V/S.

The Union of India through

1. The General Manager,
Central Railway, Bombay.
2. The Chief Personnel Officer,
Central Railway, Bombay V.T.

By Advocate Shri V.G.Rege
C.G.S.C.

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

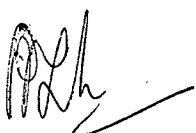
The applicants in this OA. have approached the Tribunal because they were not permitted to appear in the selection for the post of Assistant Commercial Superintendent which was held on 29.4.1989. The applicants stated in the OA. that many of the candidates who were called for the selection were junior to the applicants in terms of the seniority list published by the respondents for the purpose of calling the candidates for the selection to the

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post of ACS. Applicants No. 1,4 and 5 i.e. S/Shri Tete, Raikwar and Pawnorkar belong to Scheduled Tribe while Applicants No. 2, 3 & 6, Pathare, Gadhire and Kanphade belong to Scheduled Caste. The applicants' case rests on the argument that since they have been shown senior in the seniority list, they are entitled to be called for the selection even as general candidates as they have attained the seniority by virtue of their date of promotion for the feeder grade of Rs.700-900 (Rs.2000-3200(RPS)).

2. It has been brought out by the respondents that the selection was conducted for 42 posts and since the number of SC and ST candidates were already working for taking into account the 15% of the posts which required to be filled in from SC candidates and 7½% posts to be filled in from ST candidates, there was a short fall of only 2 SC posts and there was no short fall in the ST posts.

3. It has been further brought out by the respondents that against the two reserved vacancies for the Scheduled Caste candidates, six employees were called, the details of which were given at page (5) of the written statement. All the six persons who were called, i.e. O.P.Ramraje, Mahendra Pratap, N.R.Mustaria, S.R.Tirpude, D.B.Gaikward and Sukhanandan are senior to the Scheduled Caste applicants at S.No. 2, 3 and 6 and therefore these applicants have no case for being considered against the Scheduled Caste posts as only their seniors have been considered.



As far as the Scheduled Tribe vacancies are concerned, since no posts for the selection was reserved for Scheduled Tribe persons, 7½% have been filled in by Scheduled Tribe candidates, the applicants at S.No. 1, 4 and 5 could not have been considered as Scheduled Tribe candidates.

4. The next question to be examined in this case is if the applicants No. 1, 4 and 5 Tete, Raikwar and Pawnorkar have a right to be considered as a general candidate by virtue of their seniority in the feeder grade. The respondents have brought out in detail the position of each of these candidates in 'Ex.A-1 to A-6'. As far as Applicant No. 5 Pawnorkar is concerned, the respondents have submitted that Pawnorkar reached upto Grade of Rs.700-900 with reservation quota. He has not been called for selection to Group-B. None of his juniors in the initial grade have been called for selection to Group-B. As far as Applicant No. 4 Raikwar is concerned, the respondents have brought out that he was appointed as Commercial Inspector in the Grade of Rs.455-700 against the direct recruitment quota. He was selected as Commercial Inspector Gr.Rs.455-700 against quota and he qualified this selection with relaxed standards. He further got promoted in Grade of Rs.700-900 after qualifying the selection with relaxed standard. The respondents have brought out that since Shri Raikwar has passed various selections with relaxed standard as applicant in reserved category, he cannot be considered anywhere in the general seniority, even though his juniors have been called for Group 'B' selection who have qualified



without relaxed standard. As far as Applicant No. 1 Shri Tete is concerned, the respondents have brought out that Shri Tete was promoted to Grade Rs.370-475 and Rs.550-750 against quota and with relaxed standard. The respondents have further brought out that he was further promoted to Gr. Rs.700-900 also with relaxed standard. Therefore, he did not find any place in the general selection even though his junior employees have been called for selection.

5. The main question, therefore, remains to be decided is whether the applicants who have qualified in the feeder Grade with the relaxed standard would have a right to be considered against general posts by virtue of their date of promotion in a particular post. This question has recently been decided by the Hon'ble Supreme Court in their judgement in Union of India & Ors. Etc. vs. Virpal Singh Chauhan Etc. JT 1995 (7) S.C. 231. In this judgement the Hon'ble Supreme Court has laid down three rules in Para 29 which reads as under :-

- "(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (unit for application of rule of reservation) are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and thereafter the roster cannot be followed except to the extent indicated in Para-5 of R.K. Sabharwal. While determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

(ii) The percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies.

(iii) So far as Railway Guards in Railway service are concerned - that is the only category we are concerned herewith - the seniority position in the promoted category as between reserved candidates and general candidates shall be the same as their inter se seniority position in Grade 'C' at any given point of time provided that at that given point of time, both the general candidate and the reserved category candidates are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in a subsequent batch. (This is for the reason that the circulars/ letters aforesaid do not make or recognise any such distinction.) In other words, even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category."

The Hon'ble Supreme Court further occasioned to deal with this particular issue in another judgement in *Ajit Singh Januja & Ors. vs. State of Punjab & Ors.* (1996) 2 SCC 715 and after considering the various aspects the Hon'ble Supreme Court has observed in Para 16 as under :-

"16. We respectfully concur with the view in *Union of India v. Virpal Singh Chauhan*, that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated "consequential seniority". If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category is promoted later to that higher grade the general category candidate shall



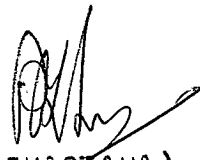
regain his seniority over such earlier promoted Scheduled Caste/Tribe candidate. As already pointed out above that when a Scheduled Caste/Tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such Scheduled Caste/Tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such Scheduled Caste/Tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste/Tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority."


6. In view of these categorical statements made by the Hon'ble Supreme Court in the above two judgements, the issue stands finally settled. Thus, the reserved community candidates who had got promotion by virtue of reservation would not get seniority from their date of promotion for the purpose of further promotion. In the present case, Applicant No. 1 has got promotion in various categories not only against the reserved post but also has been selected by applying relaxed standard as applicable to the reserved community candidates. Therefore, he can only be considered against the reserved posts and cannot have claim against the general category posts because he has passed the various tests for promotion upto the



Grade of Rs.700-900 by relaxed standard. Therefore, no exception can be made to the respondents' decision in not allowing Applicant No.1 for being considered against the general category posts as there was no reservation for the Scheduled Tribe community in the selection. Similar is the case of Applicant No. 4 Shri Raikwar. Since he has also passed the relaxed standard, he cannot be considered for promotion to the general posts and in this case also the respondents' decision cannot be assailed. As far as Applicant No. 5 Shri Pawnorkar is concerned, it has been brought out that he got promotion to Grade Rs.700-900 with reservation quota but in his case the relaxed standard has not been made use of. However, the respondents have brought out that he was not called for as none of his juniors have been called for selection. Since it has been clearly held by the Hon. Supreme Court in Virpal Singh Chauhan's case as well as in Ajit Singh Januja's case quota above, that the promotion against the reserved quota will not give accelerated seniority, the seniority of Pawnorkar can only be compared with the general candidates in the initial grade. Since none of his juniors in the initial grade have been called for the selection, there is no case for Shri Pawnorkar being called for the selection on the basis of his date of promotion to the Gr.Rs.700-900 against reserved quota.

5. In the result, there is no merit in the case of the applicants. The OA. is, therefore, dismissed. There will be no order as to the costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.